

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,)	No. CR21-5336-RJB
Plaintiff,)	
v.)	DEFENSE SENTENCING
REYES DE LA CRUZ III,)	MEMORANDUM
Defendant.)	

I. INTRODUCTION

The Court will sentence Reyes De La Cruz, III on September 16, 2022. The defense respectfully recommends that the Court impose a total sentence of 30 months' custody followed by three years of supervised release. For Mr. De La Cruz – a man who has never before been to prison, has endured enormous trauma, suffers from post-traumatic stress disorder, has a long-standing substance use disorder, and who committed his offense while in the throes of his addiction – such a sentence is sufficient to achieve each of the goals of sentencing.

II. BACKGROUND¹

A. Early Life

Reyes was born in Moses Lake, Washington in 1974 to Reyes Sr. and Debbie, when his parents were 22 and 18 years old respectively. They separated when Reyes

¹ Much of this background information was gathered by a social work student during their internship at our office. The included quotes are from Mr. Reyes's conversation with the intern.

1 was two years old and his father enlisted in the Army. Throughout the remainder of his
2 childhood, Reyes was continuously uprooted, alternating between living with his
3 mother and father.

4 At first, Reyes lived with his mother. He recalls that his father left the family
5 “without anything.” His mother and siblings did the best they could, but struggled. At
6 times Reyes’s mother shoplifted in order to feed her children.

7 Reyes then went to live with his father in California. He believes that his father
8 sent for him so that he could claim Reyes as a hardship and leave the Army. After
9 leaving the Army, his father turned to drug dealing to support himself. Reyes recalls
10 him selling drugs throughout his childhood: “We were exposed to this lifestyle at a
11 young age, but tried to look the other way.” Reyes reports that his father beat him as far
12 as back as he can remember and recounted that when he was two years old, his father
13 slammed his head into the wall so hard that it left a dent. In addition to the beatings, his
14 father was emotionally and psychologically abusive. Reyes recalls his dad was irritated
15 frequently and would take those emotions out on him, telling Reyes that he was
16 worthless and questioning his manliness.

17 Living with his mother and stepfather was no better. Reyes’s mother and
18 stepfather were both “alcoholics” and went to parties and bars all night, leaving the kids
19 alone at the house. When they returned, they would “bring the bar back to the house.”
20 Reyes’s stepfather physically abused both his mother and the kids. He would take off
21 his belt and “start whacking” the kids and cursing when they returned home late or left
22 a mess in their room. His stepfather was incarcerated when he inflicted serious injuries
23 on Reyes’s younger brother while he was in his crib. Despite the severity and
24 persistence of this abuse, it was only after his mother learned that her husband had been
25 sexually abusing Reyes’s sister that she finally left her husband.

1 **B. School Years**

2 In elementary school, Reyes says he fought with his peers often, particularly
3 because his family did not have the financial means to purchase “in-style” clothing and
4 other students teased him. Reyes says he had no school support at home and was an
5 average student. Even without support at home, Reyes found personal motivation from
6 his peers. He remembers thinking, “I want to be somebody,” and recounts his role
7 models were peers who had influential positions in school.

8 After many moves between his biological parents, Reyes eventually lived with
9 his uncle, Renaldo. Renaldo was a uniquely positive influence in Reyes’s life. His uncle
10 taught him to carry himself in a motivated and disciplined manner. His uncle modeled
11 the value of a sober life. And he encouraged Reyes to keep working hard. During this
12 time Reyes became more involved in school and received the “Mr. Congeniality”
13 school award.

14 The respite from abuse and exposure to drugs and alcohol was short-lived, but
15 Reyes continued to heed his uncle’s advice. In the middle of 10th grade, Reyes was
16 uprooted to live again with his mother. He attended three different schools that year.
17 Looking back, Reyes believes his mother was emotionally lost and moved the family
18 around in response. Reyes’s family ultimately relocated back to Yakima Valley where
19 Reyes’s brother Aaron became gang-involved and started selling drugs. He is currently
20 in prison in Oregon.

21 In 11th grade, Reyes moved back to Moses Lake and began spending more time
22 at a friend’s house than his own. He joined the wrestling team, and he became
23 increasingly career-oriented. He joined student government, became involved in
24 theater, and generally found success. His mother explains, “he was a liked by everyone
25 and he would help anyone.” *See* Ex. 2 (support letters).

1 **C. Military Career and Transition to Adulthood**

2 Mr. De La Cruz passed up a partial scholarship to college and instead joined the
3 Marine Corps. In boot camp, Mr. De La Cruz graduated as the most “physically fit
4 Marine.” After boot camp, he completed infantry training and was selected for
5 amphibious reconnaissance, where he underwent a grueling selection process. After
6 successfully becoming a recon marine, Mr. De La Cruz deployed overseas. Mr. De La
7 Cruz recalls his time in the Marine Corps as a “good experience,” but mentions that he
8 drank heavily with his Marine Corps peers.

9 During his time with the Marines, Mr. De La Cruz was the victim of Military
10 Sexual Trauma and lost a Marine Corps peer unexpectedly during a night dive training
11 exercise, both of which contributed to his PTSD diagnosis. The MST stems from a
12 hazing incident. As Mr. De La Cruz was going through reconnaissance training, the
13 recruits were blindfolded and forced to have sex with a person they believed to be a
14 woman. It was later revealed to them that she was transgender. Reyes has involuntary
15 and intrusive thoughts about both of these events. Additionally, he expresses feeling on
16 “high alert” when he encounters someone who reminds him of his MST, and has had
17 increased reactivity and a “fighting” instinct since these events. At times, he also has
18 flashbacks to being in the Marines.

19 **D. Family and Career**

20 Mr. De La Cruz attended Central Texas College and earned an associate’s degree
21 while in the military. When his girlfriend became pregnant with their daughter, he
22 chose not to reenlist. Mr. De La Cruz moved back to Moses Lake and worked in
23 construction for a year before starting a position with the State of Washington in about
24 1996. Over the next 7 years, Mr. De La Cruz worked for the state in various positions.
25
26

1 In Moses Lake, Mr. De La Cruz developed a relationship with Sonda and
2 together they had a son. By all accounts and records, this relationship was profoundly
3 unhealthy. Mr. De La Cruz drank heavily, in part because of a deep-seated unhappiness
4 and untreated mental health issues. Sonda recalls Mr. De La Cruz had an “extreme”
5 drinking and cocaine habit. Over time, their relationship worsened and the two
6 separated. Although the relationship was tumultuous, Sonda says she thinks Mr. De La
7 Cruz is a “good person on the inside” and they continue to be friends.

8 After Mr. De La Cruz and Sonda separated, he moved from Moses Lake to
9 Spokane, where he reconnected with his father who had finished his prison sentence.
10 Mr. De La Cruz’s father became his “drinking buddy,” and the two of them drank
11 heavily together. He also had another child, a son who is high on the autism spectrum.
12 Mr. De La Cruz has relationships with all of his children.

13 **E. Substance Use History**

14 Mr. De La Cruz started drinking in the 6th grade, and had his first “buzz” in the
15 7th grade. He thought drinking was “fun,” but his drinking tapered as he became more
16 involved in sports and other hobbies. Eventually, though, alcohol and then other drugs
17 became a part of Mr. De La Cruz’s way of continuing on. As his mother explains,
18 “Drugs became the answer to all of his tough life circumstances.” Ex. 2. For a while, he
19 saw himself as a “functional” addict, regularly drinking and using cocaine, but
20 maintaining his job and relationships.

21 At various points, however, even he could not avoid how dysfunctional he had
22 become. His substance use impacted his work, and he often called out or came to work
23 late. He went to jail for driving under the influence. His family encouraged him to
24 participate in treatment. Mr. De La Cruz has completed one 28-day inpatient program
25 and several outpatient programs and has at times been able to maintain his sobriety.
26

1 By 2016, his drinking made keeping a job impossible. He also lost his housing.
2 He stopped drinking only when he started using methamphetamine. In 2019 or 2020, he
3 also started smoking heroin. During the first year of the COVID-19 pandemic and the
4 time of his offenses, Mr. De La Cruz's methamphetamine and heroin use increased
5 significantly. He worked from home and used heroin and methamphetamine, only
6 sleeping three to four hours a day. Looking back, he is not sure how he survived this
7 period of time, and credits his arrest with saving his life.

8 **F. Mental Health**

9 In part because of the stigma surrounding mental illness, particularly in his
10 community and in the military, Mr. De La Cruz has had only limited mental health
11 therapy or counseling. Despite feelings of suicidality and prolonged periods of
12 depression, he did what he had been taught – turned inwards and avoided discussing the
13 pain of past events. He recognizes now that he does not have the tools on his own to
14 address his PTSD and substance abuse disorder. He has read books while in custody
15 regarding mental health, hoping to gain some tools, and is looking forward to the
16 chance to engage in mental health treatment.

17 **III. SENTENCING GUIDELINES**

18 The defense has no objection to Probation's advisory guideline calculation. As
19 reflected in the sentencing recommendations before the Court, the guidelines grossly
20 overestimate the appropriate punishment in this case.

21 In part the guidelines are a poor predictor because Mr. De La Cruz's criminal
22 history category of VI overstates his criminal history. Mr. De La Cruz has six criminal
23 history points attributable to driving offense. PSR ¶¶ 55-57. Moreover, while the names
24 of some of his other offenses seem menacing, he has only one case that involves felony
25 counts. PSR ¶ 58; compare PSR ¶¶ 53-54, 59. On none of these non-driving-related
26 cases was Mr. De La Cruz sentenced to more than a couple of months of custody. He

1 has never been to prison. His history reflects his steady and increasing addiction to
2 drugs, untreated PTSD, and related dysfunctional relationships.

3 Moreover, the guidelines are unable to account for Mr. De La Cruz's humanity,
4 the incredible trauma he has endured, and his genuine remorse (*see* Exhibit) for his
5 offense.

6 **IV. SENTENCING RECOMMENDATION**

7 **A. Retribution**

8 Mr. De La Cruz is the first to acknowledge the seriousness of his offense and the
9 way in which he betrayed his responsibilities to the state during a time of great need.
10 Nonetheless, a sentence of 30 months' incarceration, three years of supervised release,
11 and a financial obligation of \$360,000 is sufficient to punish Mr. De La Cruz.

12 The defense agrees with the government regarding the unprecedented context of
13 Mr. De La Cruz's offense, that there were "chaotic, desperate, and dire circumstances
14 facing our nation." Dkt. 34 at 7. But while the nation reeled during the pandemic, so did
15 Mr. De La Cruz. He was not immune from this unprecedented national crisis, but rather
16 was particularly vulnerable to it. People like Mr. De La Cruz, people with substance use
17 disorders and mental health challenges, suffered acutely during the pandemic. *See*
18 Hayley Hudson, [COVID-19 Is Causing People To Relapse - Addiction Center](#) (April
19 30, 2020); [Macklemore Opens Up About 'Painful' COVID Relapse \(people.com\)](#) (last
20 visited September 1, 2022). Working from home allowed Mr. De La Cruz to hide the
21 severity of his substance use disorder. Co-workers and family members could not see
22 how he was spiraling. Isolated and anxious, his mental health worsened, and he turned
23 to his familiar crutch – drugs – to help him get through the day. As his addiction
24 worsened, so did his judgment and need for money.

25 A 30-month sentence is significant punishment for Mr. De La Cruz. He has
26 never before been to prison, and has never served a sentence longer than six months. A

1 sentence five times as long is sufficient to punish Mr. De La Cruz, particularly given
2 the grim conditions in institutional settings during the ongoing pandemic.

3 **B. Deterrence and Incapacitation**

4 The Court need not impose a longer sentence in order to convince Mr. De La
5 Cruz of the wrongfulness of his actions or to protect the public from Mr. De La Cruz.
6 Mr. De La Cruz has spent the last year thinking deeply about his decisions, how he
7 ended up here, and what he can do to ensure that he never runs afoul of the law again.
8 At first, plagued by guilt and faced with the consequences of his actions, Mr. De La
9 Cruz thought his life was not one worth living. Over the last 12 months, he has come to
10 recognize that his is a life worth living and that he need not be defined by his criminal
11 conduct. He is determined to help others and is considering a career as a chemical
12 dependency counselor. *See* Ex. 1. He is focused on addressing his mental health and
13 substance use disorder, knowing that he cannot be of service to others, whether
14 personally or professionally, until he himself is healthy and stable. Incarceration is
15 unnecessary to the goals of deterrence and incapacitation.

16 Nor is a longer sentence necessary to achieve the goal of general deterrence.
17 Research has refuted the notion of marginal general deterrence – that more severe
18 sentences serve as a general deterrent to crime. As one criminologist concluded there is
19 “no real evidence of a deterrent effect for severity.” R. Pasternoster, *How Much Do We*
20 *Really Know About Criminal Deterrence*, 100 J. Crim. L. & Criminology 765, 817
21 (2010). “The fallacy that is marginal general deterrence is highlighted by the fact that
22 nearly 90% of criminologists believe that it does not work, which is similar to the
23 scientific consensus relating to the causes of global warming.” Mirko Bagaric, Victoria
24 Lambropoulos, Lidia Xynas, *Excessive Criminal Punishment Amounts to Punishing the*
25 *Innocent: An Argument for Taking the Parsimony Principle Seriously*, 57 S. TEX. L.
26 REV. 1, 28 (2015). The literature on deterrence is clear that it is increased certainty of

1 being caught, not increased severity, that deters people from committing crimes. *See*
2 Daniel S. Nagin, *Deterrence in the Twenty-First Century*, 42 Crime & Just. 199, 201
3 (2013) (“[E]vidence in support of the deterrent effect of various measures of the
4 certainty of punishment is far more convincing and consistent than for the severity of
5 punishment.”); Valerie Wright, *Deterrence in Criminal Justice: Evaluating Certainty*
6 *vs. Severity of Punishment* 4 (2010), available at [https://www.sentencingproject.org/wp-](https://www.sentencingproject.org/wp-content/uploads/2016/01/Deterrence-in-Criminal-Justice.pdf)
7 [content/uploads/2016/01/Deterrence-in-Criminal-Justice.pdf](https://www.sentencingproject.org/wp-content/uploads/2016/01/Deterrence-in-Criminal-Justice.pdf) (last visited September 9,
8 2022) (“Criminological research over several decades and in various nations generally
9 concludes that enhancing the certainty of punishment produces a stronger deterrent
10 effect than increasing the severity of punishment.”).

11 A federal felony conviction, incarceration for 30 months, supervised release for
12 five years, and a \$360,000 restitution order combine to provide severe enough
13 punishment so as to deter others from believing crime pays.

14 C. Rehabilitation

15 By all accounts, Mr. De La Cruz needs treatment, and that treatment is best
16 provided in the community. While no substitute for community-based care, Mr. De La
17 Cruz asks the Court to recommend his participation in the BOP’s Residential Drug
18 Abuse Program. He also asks that the Court recommend his placement at either
19 Terminal Island or FCI Englewood, institutions with appropriate programming and
20 training opportunities.

21 V. CONCLUSION

22 Reyes De La Cruz has endured a lifetime of hardship and he is deeply
23 remorseful for the hardship he has now caused others. He respectfully asks the Court to
24 impose a sentence of 30 months’ incarceration followed by five years of supervised
25 release.

1 DATED this 9th day of September, 2022.

2 Respectfully submitted,

3 *s/ Corey Endo*

4 First Assistant Federal Defender

5 Attorney for Reyes De La Cruz III